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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,385	02/27/2002	Satoshi Hirahara	220049US0	4760
22850	7590	12/12/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			VO, HAI	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 12/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/083,385

Applicant(s)

HIRAHARA ET AL.

Examiner

Hai Vo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-11, 13-15, 30, 32, 34, 36-40 and 42-47.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: All of the art rejections have been maintained. Applicants argue that Koschany discloses all forms of support materials either non-woven fabrics, papers or woven fabrics are not necessarily required to be electrically conductive. Applicants assert that the present invention requires a conductive carbonaceous fiber woven fabric. It is reminded that Koschany is relied on as a secondary reference and the conductive carbonaceous fibers were already taught by Miwa. The teachings of Koschany give those skilled in the art the tools to conclude that paper, nonwoven fabric, woven fabric equivalently work the same for gas diffusion electrodes. Substitution of the woven fabric for the paper of the Miwa reference is acceptable and known in the gas diffusion electrode art. Therefore, it is not seen that the use of the woven fabric in combination of a binder as described in the Miwa reference would not have resulted in the conductive carbonaceous-fiber fabric as recited by the claims. Applicants further argue that Koschany does not recognize that conductive carbonaceous-fiber woven fabrics are superior to nonwoven fabrics based on the reference disclosure at column 2, lines 47-59. While it is true that Koschany does not recognize the superior properties of the woven fabric, nothing in Koschany excludes the use of the woven fabric as a gas diffusion electrode. Therefore, Koschany is properly combinable with Miwa to achieve the conductive carbonaceous-fiber fabric of the present invention. The art rejections based on Tajiri have been maintained for the same reasons as discussed above. Finally, Applicants argue that none of the cited references teaches or suggests a conductive carbonaceous-fiber fabric as claimed having a bending resistance as determined by the 45o Cantilever method of 6 cm or higher. Applicants state that it is not obvious or inherent to make a woven fabric having the claimed bending resistance. The examiner disagrees. The present specification discloses that the woven fabrics without the binder generally have a bending resistance (L) of 5 cm or lower while the bonded and fused woven fabrics would have a bending resistance of 8 cm or higher. Likewise, the woven fabrics with the binder would have the bending resistance of 8 cm or higher. It appears that the combined teachings of the prior art would result in the conductive carbonaceous-fiber woven fabric with the binder. Therefore, it is not seen that the resulting woven fabric would have the bending resistance outside the claimed range because like material has like property.

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PRIMARY EXAMINER